

## ANALYSIS AND FINDINGS FOR FLEXIBLE SETBACK APPROVAL

***Section 40.30.15.5.C lists the approval criteria for Flexible Setback approval. In order to approve a Flexible Setback for a Proposed Residential Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:***

- 1. The proposal satisfies the threshold requirements for a Zero Side Yard or Zero Rear Yard Setback for a Proposed Residential Land Division application.***

***Facts and Findings:***

The intent of this criterion is to ensure the proposed project meets the threshold listed in Section 40.30.15.5.A.1. The proposal meets this requirement by being consistent with the following threshold:

*“The property is located within a residential zoning district and is accompanied by a land division application for the subject property.”*

The applicant is proposing the flexible setback as part of a fifteen (15) lot residential subdivision.

Therefore, staff find that the proposal meets the criterion for approval.

- 2. All City application fees related to the application under consideration by the decision making authority have been submitted.***

***Facts and Findings:***

The intent of this criterion is to ensure that all fees have been paid to the City before a full review can proceed. According to city finance records, the applicant paid with a check (#18591) in the amount of \$804.00 to the City to have the proposed project review for compliance with the Development Code. The City issued receipt number 20045149 to verify payment.

Therefore, staff find that the proposal meets the criterion for approval.

- 3. The side or rear yard setback on all adjacent lots which abut the proposed zero side or rear setback are either zero feet (0') or ten feet (10') or more.***

*Facts and Findings:*

The proposal requests a reduction in the rear and side yard setbacks. The surrounding properties with existing structures are greater than 10 feet from the property line of the project under review. Although the applicant is requesting a zero lot line setback for the two open spaces on the north and south portions of the property, staff has reviewed the proposal for the parent parcel. Staff supports setback flexibility for the development as future building designs or locations may change during the construction stage. Staff has reviewed the material submitted by the applicant and has determined that all existing buildings and structures are greater than 10-feet from the property line.

Therefore, staff find that the proposal meets the criterion for approval.

**4. *The zero side or zero rear yard is not abutting a public right-of-way or any access easement.***

*Facts and Findings:*

The southern portion of the site does abut Multnomah Boulevard. However, the project as proposed shows a large tract to be used as open space, and therefore will not be developed. The nearest developable lot is located 180-feet from Multnomah Boulevard. The southern boundary of the site will also have an emergence and pedestrian access easement. This will in effect restrict vehicular access, making all vehicles (with the exception of emergency), to take access from Canby Street. Furthermore, staff finds that by creating an open space tract adjacent to Multnomah Boulevard, minimizing the impact to local residents, there are no adverse effects.

Therefore, staff find that the proposal meets the criterion for approval.

**5. *No portion of a structure or architectural feature shall project over a property line related to the zero side or rear yard setback unless a permanent easement allowing such projection has been granted.***

*Facts and Findings:*

There are no structures or architectural features proposed over any of the lot line within the parent parcel or over any of the proposed lot lines within the subdivision.

Therefore, staff find that the proposal meets the criterion for approval.

- 6. *A four foot (4') non-exclusive maintenance easement appears on the plat within the adjacent side or rear yard setback of the adjacent lot where it abuts the zero setback.***

*Facts and Findings:*

The applicant states that easements can be placed along all edges of the open space tracts, where the zero lot line is being proposed. Because there are no structures proposed in the open space areas where a zero lot line is requested, a four foot (4') non-exclusive maintenance easement will not be required for the adjacent lots. An easement will be conditioned to be placed around the open space tract to ensure access to any utilities that may be placed as part of the development.

Therefore, staff find that the proposal meets the criterion for approval.

- 7. *Satisfactory deed restrictions are submitted with the preliminary land division which address maintenance requirements for the zero setback wall.***

*Facts and Findings:*

The applicant has stated that placed along all edges of the open space tracts. Although, no deed restrictions have been submitted during review, staff has conditioned the applicant to submit deed restrictions which specifically address maintenance requirements for the zero setback wall.

Therefore, staff find that by satisfying the conditions of approval, the proposal meets the criterion for approval.

- 8. *Five foot utility easements are provided along all side and rear property lines except where the zero setback is designated.***

*Facts and Findings:*

The applicant states that easements can be placed along all edges of the open space tracts, where the zero lot line is being proposed. Because there are no structures proposed in the open space areas where a zero lot line is requested a five foot utility easement will be required prior to the issuance of a Site Development permit, except where the zero setback is designated.

Therefore, staff find that by satisfying the conditions of approval, the proposal meets the criterion for approval.

9. ***The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, coverage, density, rooflines, and materials.***

*Facts and Findings:*

It is not the intent of the Code's flexible setback procedure to allow reductions to modify the 20% open space requirement as stated in Section 60.35.15. The intent of the flexible setback is to allow flexibility in the design of the site with respect to the structures, both existing and future development. It is not the intent to allow the flexible setback to be used as a mechanism for the applicant to meet the 20% open space requirement by reducing the required setback standard of 60.35.15.2 which states "land required to be set aside as setbacks or buffers shall not be included in the calculation of required open space."

Staff finds that the flexible setback, as proposed, does meet the approval criterion with regard to compatibility to the surrounding area because the surrounding structures are greater than 10-feet from the property line.

Therefore, staff find that the proposal meets the criterion for approval.

10. ***Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

*Facts and Findings:*

The intent of this criterion is to ensure the proposed project submits all the proper development applications on the proper sequence. The applicant has submitted three additional applications; Conditional Use Permit CU2004-0021, Land Division LD2004-0030 and Tree Plan TP2004-0018. The Planning Commission will review all four applications at one public hearing. All documentation and applications have been submitted to the City of Beaverton in the proper sequence.

**SUMMARY OF FINDINGS:** For the reasons identified above, staff find that the request for Flexible Setback approval to reduce the side and rear yard setbacks of the proposed fifteen (15) lots is supported within the approval criteria findings, noted above, for Chapter 40, Section 40.30.15.3.C of the Development Code.

The Committee met on December 8, 2004, and had no recommended conditions of approval to meet the necessary technical criteria identified in Section 40.03 of the Development Code. Based on the facts and findings presented, the Director concludes that the proposal, FS2004-0017 (Garden Grove Planned Unit Development Flexible Setbacks), meets the criteria.

## RECOMMENDATION

Based on the facts and findings presented, staff recommend **APPROVAL** of **FS2004-0017 (Garden Grove Planned Unit Development Flexible Setback)**, subject to the applicable conditions identified in Attachment F.